

**SIXTH DAY.**

Senate Chamber,  
Austin, Texas,  
September 20, 1933.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Oneal.
Blackert.	Pace.
Collie.	Parr.
Cousins.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Greer.	Redditt.
Holbrook.	Regan.
Hopkins.	Russek.
Hornsby.	Sanderford.
Martin.	Small.
Moore.	Stone.
Murphy.	Woodul.
Neal.	Woodward.

Absent—Excused.

Woodruff.

Prayer by Rev. George Green of Austin.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

**Bills and Resolutions.**

By Senators Oneal, Poage, Fellbaum, Murphy, Holbrook.

S. B. No. 10, A bill to be entitled "An Act amending Title 126, Revised Civil Statutes, 1925, and Title 19 of the Penal Code of Texas by adding a new article to each of said titles, to be known as Article 7438-a, Revised Civil Statutes of 1925, and Article 1644-a, Penal Code of Texas, so as to provide for and authorize an additional defense in all suits, actions or prosecutions under said titles; and providing that such defense shall not be available in any pending cause or in any cause of action, whether sued upon or not, for any act, trade practice or agreement committed, performed, or attempted to be performed prior to the adoption and approval of any code, trade practice, license or agreement legally ap-

proved, performed or issued under the terms of the National Industrial Recovery Act; and providing for the additional remedy of injunction by the State for violations of the provisions of such titles in addition to all other penalties now provided by law; and providing for the duration and termination of this Act; and declaring an emergency."

Read and referred to Committee of the Whole, on motion of Senator Oneal.

Address by Judge J. C. Hutcheson.

On motion of Senator Holbrook, the following address was ordered printed in the Journal:

On the eve of Constitution Week an esteemed son of Texas, Joseph C. Hutcheson, Jr., United States Circuit Judge, has addressed us as accounted by the Houston Post, September 17, 1933, as follows:

"One hundred and fifty years less four, ago, September 17, 1787, 39 of the 55 delegates whose untiring patience, devotion and good sense had framed it, signed the Constitution of the United States and made its provisions known.

"Formed in four months of secret sessions, the result of compromises and of the adjustment of controversies between the 'die-hards' and the 'bitter-enders' which sometimes threatened to wreck the convention, the document had the wholehearted approval of not one of the 39 who signed it. Some downright and inflexible men, like Edmund Randolph and Elbridge Gerry, refused, not for hard feeling, but for sheer disappointment, to sign. It had yet to be adopted by conventions in the several states, and it was to be expected that the same grounds for division dissatisfaction and rancor which had made progress in the convention difficult, would be present with greater vigor and less restraint there.

**"Condition of Government.**

"A federal state," said Dicey, 'requires for its formation two conditions. There must exist in the first place, a body of countries, colonies or provinces, so closely connected by locality, by history, by race or the like, as to be capable of bearing, in the eyes of the inhabitants, the im-

press of common nationality. A second condition absolutely essential to the forming of a federal system is the existence of a very peculiar state of sentiment among the inhabitants. They must desire a union, and must not desire unity.'

"The framers of the Constitution, wise in their day and generation, believed the American colonies to constitute such a body. Patriotic, devoted, willing themselves to give and take, they believed the people to be so. They staked their homes for adoption on this belief. They won, but only upon the understanding insisted upon by Virginia and some others, that amendments be added better defining the nature of the compact, and so imposing limitations that the respective rights of the states and the nation, and of the people of both, should be clearly defined and guaranteed. Thus was formed, 'for an undefined and expanding future, and for a people gathered and to gather from many lands and of many tongues,' an 'indissoluble union of indestructible states.'

#### "Constitution Cited.

" 'This Constitution,' said Article VI, Page 2, 'and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land, and the judges in every state shall be bound thereby.

" 'And to this in accord with the understanding was added:

"Amend X: " 'The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively or to the people.'

" 'Brave words these, by which the powers of sovereignties desiring union without unity, independence and interdependence, were to be known and kept in check. Brave words indeed, and words only they would have remained, without force or effect, had not the Constitution also made provision for a tribunal with authority to mark and keep marked, the boundaries of their powers. For a federal system of government, if it is to be successful, must provide for a strong judiciary, able not only to firmly and finally settle by its decrees all controverted questions of sovereign power, but to

command the respect and confidence of those whose powers it must define, and of the people they represent. The framers of the Constitution knew this. They were law-minded. They had been made so by the long and bitter struggle of the colonists with the crown to maintain the rights they knew they had. Years before these men met in convention to make permanent what the valor and the constancy of the colonists had gained, Burke, in moving words, had immortalized this American trait. Prophesying that America would never be subdued would never back for government, and declaring that her people natural lawyers are trained to love law, they are natural lawyers, and other than a government of law or it is no government to them, he paid them this enduring tribute:

#### "Burke Pays Tribute.

" 'Such men are acute, dexterous, prompt in attack, ready in defense, full of resources: In other countries the people more simple and of less mercurial caste, judge of a nil principle in government only by an actual grievance. Here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They auger misgovernment at a distance, and sniff the approach of tyranny in every tainted breeze.'

" 'Later, Dicey said it of their posterity:

" 'The main reason why the United States has carried out the federal system with unequalled success is because the people of the Union are more imbued with legal ideas than any other nation.'

"Article 3 of the Constitution speaks this lawmindedness: it provides in Section 1:

" 'The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as Congress may from time to time ordain and establish,' and in Section 2 for the extension of that power to and its exertion over . . . 'all cases arising under the Constitution, laws and treaties of the United States.' To this article more than to the fifth article providing for amendments, and to the wisdom and insight of those to whom its administration has been confided, is due the Constitu-

tion flexibility and power of adaptation of the Constitution which has been its most solid and enduring guaranty of permanence and success.

#### "Changes Provided.

"The Fifth article, with its provisions for amendment, while of course the instrument of substantial constitutional changes, has operated more as a safety valve than as an instrument for change. Though there have been literally thousands of proposals for amendments, only 19 have been adopted, and these in groups and at long intervals. The first 12 in the first 10 years of the country's life; the next three, the Thirteenth, Fourteenth and Fifteenth, after 60 years, during the period of the reconstruction; the last four another 50 years later, in the decade of the 'New Freedom' from 1910 to 1920.

"It has been by construction, not amendment, that the Constitution has been expanded and adapted to meet our changing needs. A construction, which keeping ever in mind the illuminating words of Marshall, 'It is a Constitution we are expounding,' has interpreted its great generalities through which its spirit speaks, as permitting, nay requiring, its adaptation to our changing social life, and the correction of new abuses which adherence to old ways, in the midst of new complexities, inevitably brings about. A construction which, keeping the Constitution on the march, has prevented stagnation and crystalization by refusing to identify with the constitution the particular notions of policy, the particular views of economics, the particular views of moral or social good prevalent at any particular time. A construction which has kept ever in mind and ever kept faith with the great, the fundamental purposes of the instrument, to promote not unity, but a more perfect union.

#### "Despair Rapped.

"If these views are sound, are not some of us today unduly concerned over the fate of the Constitution? Are we not, faced with the distressing conditions around us, and the new measures and methods proposed and brought forward to relieve them, underrating the toughness of the national fiber, the enduring permanence of the national ideals and the glow-

ing life and unchanging power of the spirit of the Constitution? I think we are.

"Many are now, I think, as many have done before, making the mistake of viewing the Constitution so narrowly in terms of their own preconceptions that the very intensity of their gaze occludes their vision of its dire prediction that the states would shortly be reduced to mere satrapies, the federal government engorged to a monstrous tyranny. In successive periods of strain and stress, the same cry has been raised. This cry has always proven unfounded. It always will prove so.

#### "Constitution Stands Alone.

"It cannot be doubted that when the present stress is passed, and with calmer view some of the measures now being pressed are examined, especially if they have been passed through the fuller's fire of judicial action, the Constitution will still be found standing, strong in all its parts, forming a perfect union and cementing it, protecting against unitization and preventing it. Just as they were wrong who believed that the Civil War amendments in strengthening federal power had overthrown the Constitution; just as those were wrong who believed that the passage of the trenching on the police powers of the states, destroyed the Union by creating unity; just as those are wrong who, mournfully watching the repealing of this amendment, cry Ichabod, Ichabod—so those are wrong who, either because they wish it or because they fear it, see death to the Constitution in the conditions which surround us. None of these were right; neither could be. The very structure and frame of the Constitution, the very instruments provided for its interpretation and its amendment, the very force of the fact that a document, prepared for a union of 13 states and 3,000,000 people, now serves a union of 48 states and 120,000,000 people, prove this.

#### "Growth Is Testimony.

"What a significant testimonial it is to its permanence that many of the states are individually more populous and greatly richer than the whole of them were in the beginning, and almost all of them greatly exceed

in strength and resources every original state. Is there then no Achilles' heel, no vulnerable point, no cloud on the horizon? Indeed, there is.

"It resides in, it springs from, the nature of man, dressed in a little brief authority, and in the remoteness of administrators from the fields and the subjects of their administration. As governments grow powerful, as they broaden and expand in territory and influence so that administration ceases to be personal and becomes bureaucratic, those who administer it tend to become more and more impatient of limitations and restraint; are coming more and more to regard themselves not only as the executors, but as the sources of power, they first evade, then boldly defy the limitations which, successfully evaded, they have learned to despise. This, however, would not be serious in a constitutional government like ours, where the real power, at least, is in the legislature, with its power over the purse and its undoubted right to make the laws under which we live, were it not for the change which has come over the legislators in the spirit of their dreams regarding their constitutional duties and function.

#### "Clauses of Support.

"The senators and representatives before mentioned and the members of the several state legislatures and all executive and judicial officers both of the United States and of the several states, shall be bound by oath or affirmation to support this Constitution."

"In times past lawmakers felt themselves constrained by this oath to make no law, to vote for none, which in their just opinion transcended the fundamental law. I do not suppose any deliberately do so now. It cannot be denied, though, that there is a tendency among the makers of our laws, as well as among the executors and administrators of them, to relegate too much of the responsibility for the Constitution to the courts, its titular, and at last, guardians; a tendency to regard it still as the Ark of the Covenant, but to be kept in the tabernacle tended by its priests, the judiciary, and to be brought out before the people only at the head of great processions on state occasions.

"I have a feeling, for which the wish is father, that this is a passing phase; that the voice of the constitutional lawyer will again be heard from in legislative halls and that the presumption which rises in favor of the legislative constitutional intent will again be as sound factually as it legally is.

#### "Spirit Moves on.

"Finally, I think our concern and our fears for the Constitution at times are due as much to the unreasonable claims which its friends make for it as to the number of its detractors. It is not, it was not intended to be, even in its letter, a rigid or unchangeable document, binding us to a dead past. Certainly its spirit is not dead. To the very contrary, the spirit of the Constitution is always on the march, keeping step with the progress and achievement of its constituent states, ever holding aloft the standard of their indissoluble union, whose greatness lies more in the greatness of its parts than in the greatness of the whole. A greatness springing from the fact that there is being ever woven a pattern of national similarity through the interaction of state dissimilarities, of national homogeneity through the give and take of state heterogenities.

"Whatever experiments then are proposed or conducted in the state or nation need not trouble us so long as they impair neither the essential insularity of the states nor their essential union. When, and only when, measures are proposed or pressed which, tending to unity, rather than to union, to weaken rather than to strengthen the states and therefore seem designed to obtain unity at the sacrifice of union, need we, as the colonists did, judging misgovernment not by the pressure of an actual grievance, but by the badness of a principle, stand ready in defense."

#### Message From the House.

Hall of the House of Representatives.

Austin, Texas, Sept. 20, 1933.

Hon. Edgar E. Witt, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has adopted the following resolution:

H. C. R. No. 5, Providing for a

joint session of the House and Senate in the Hall of the House of Representatives September 20, 1933, at 10:15 for the purpose of hearing Dr. Aubrey Williams, Regional Field Representative of the Federal Emergency Relief Administration.

Respectfully submitted,

LOUISE SNOW PPHINNEY,  
Chief Clerk, House of Representatives.

**Senate Simple Resolution No. 12.**

Senator Purl sent up the following resolution:

Whereas, There are now pending before the Senate of Texas, sitting as a Committee of the Whole Senate, several bills relating to the issuance of bonds under the recent amendment to the State Constitution authorizing the issuance of bonds as provided in said amendment; and

Whereas, In connection therewith are bills having to do with the method of administering the funds arising from the sale of such bonds, if any; and

Whereas, In connection therewith it will become necessary to ascertain the method now being pursued in connection with the distribution of relief funds and the methods pursued in the past with reference thereto in order that the Senate of Texas might determine the most economical and feasible plan of distributing the funds which might arise from the sale of any bonds which might be authorized to be issued by the Legislature of Texas; and

Whereas, The Committee of the Whole Senate requests the consent of the Senate of Texas that it be empowered and authorized to summon witnesses and/or to request or notify persons who might be interested in the legislation under consideration to appear before the Committee of the Whole Senate and then and there to give testimony in reference to the matters and things under consideration and to give advice in respect to the method of distributing funds which might arise through the sale of said bonds; and

Whereas, In connection with the hearing of the matters and things pending before said Committee of the Whole Senate it may be necessary to interrogate witnesses as to the conduct of persons in connection with the distribution of funds, both State

and Federal, in reference to relief for unemployed as well as the method of distributing funds in connection therewith and in general to investigate and make inquiry as to all matters and things in connection with the distribution of said State or Federal funds and to fully interrogate and ascertain facts to enable the Legislature to act upon the legislation now pending or which may hereafter be introduced in reference to either the issuance and sale of the bonds contemplated and the expenditure of the funds as contemplated and to all expenditures under laws now in force or heretofore authorized under any law either State or Federal for relief purposes; and

Whereas, In connection with the hearing by the said Committee of the Whole Senate and in order to facilitate its work and to insure an orderly hearing it is deemed advisable that a committee of five Senators be appointed by the Chairman of the Committee of the Whole Senate to direct the introduction of testimony and the order in which it is to be offered.

Now, therefore, be it resolved by the Senate of Texas, That the Committee of the Whole Senate shall have authority to summon witnesses to appear and testify concerning the matters and things hereinabove set forth and to hear any and all persons who may be invited to give advice or information to said committee in reference to the matters and things herein mentioned and when it deems it advisable to do so may require witnesses to be placed under oath, such oath to be administered by the Chairman of the Committee of the Whole, provided however, that in all instances any person appearing before said committee for interrogating or who undertakes to give information to the committee with reference to the conduct of any person or persons in respect to the handling of any funds or the distribution of any funds or the management of any funds, either State or Federal, for relief purposes, that said person so giving evidence shall be required to be placed under oath.

Be it further resolved, That each member of the Senate shall be privileged to interrogate each and every witness appearing before said committee and such Senate member shall

be privileged to request any person or persons to be summoned as witness; that said committee shall have the power to formulate its own rules and hours for meeting and adjourning.

Be it further resolved, That in the hearing of evidence of the conduct of any person as relates to matters under investigation the rules of evidence as applied to the district court shall govern, provided, however, that technical rules having a tendency to suppress the truth or falsity of any fact shall be liberally construed.

Be it further resolved, That the committee, through its chairman, shall have the power to issue process for witnesses to any place in this State and to compel their attendance and to require witnesses to produce all books and records or other documents deemed necessary by the committee.

Be it further resolved, That said committee shall have the power and authority to arrange for the transcribing of testimony by employing competent court reporters whose duty it shall be to take down and transcribe all testimony in the manner and form as directed by said committee and that all necessary expense incident to the employment of the court reporters, the mileage and per diem of witnesses and the issuance of subpoenas and other expenses shall be paid out of the Contingent Fund of the First Called Session of the Forty-third Legislature upon a sworn account of the person or persons entitled to such pay or other compensation when approved by the chairman of said committee and sufficient money is hereby appropriated out of such Contingent Fund to meet the expenses incurred by reason thereof.

Be it further resolved, That no subpoena shall be issued and no process shall be issued except upon the approval of the committee of five Senators as herein provided and the Chairman of the Committee of the Whole Senate, and in no event shall vouchers issue for mileage and per diem for persons appearing before the committee unless process has been issued for said person or persons before said witness testifies; and that no mileage shall in any event be paid to any witness except for mileage actually travelled

to appear as a witness after being served with a process commanding him to appear and no per diem shall be paid to any witness for any time except after the appearance date for such witness as set out in said process.

Be it further resolved, That the following court reporters be employed to take such testimony as required by the Committee of the Whole: H. D. Mahaffey, H. L. Persinger, and W. E. Donnelley; that they shall be paid a per diem of \$5.00 each for such days as they or each of them actually take testimony; and that they be paid at the rate of \$.90 per page for transcribing such testimony, said page to consist of one original and four legible carbon copies; that all paper, carbon, binding covers and necessary supplies be furnished by the Senate; and that such reporters shall make delivery of the transcript of testimony by eight o'clock on the morning following the day such testimony is introduced. This schedule of prices and class of work to be done by the court reporters is recommended by the Chairman of the Committee of the Whole and by the undersigned Sub-committee, appointed to promulgate rules of procedure, for the reason that the reporters herein named submitted the lowest bid and what we believe to be the best bid for the work to be done by them.

PURL,  
WOODWARD,  
RAWLINGS,  
MURPHY,  
SMALL,  
MARTIN.

Read and adopted.

#### Joint Session.

At 10:15 o'clock a. m., the Chair announced that the hour for the joint session to hear Hon. Aubrey Williams had arrived. The Senate adjourned to the House.

#### In the House.

In accordance with the provisions of a concurrent resolution heretofore adopted, providing for a Joint Session of the House and Senate, to hear an address by Dr. Aubrey L. Williams, the Senate, at 10:15 o'clock a. am., appeared at the Bar of the

House, and, being admitted, were escorted to seats prepared for them.

Lieutenant Governor Edgar Witt and Senator George Purl, President Pro Tempore of the Senate, occupied seats on the Speaker's stand.

Speaker Stevenson called the House of Representatives to order, and stated that the two Houses were in Joint Session for the purpose of hearing an address by Dr. Aubrey L. Williams, Regional Field Representative of the Federal Emergency Relief Administration.

Lieutenant Governor Edgar Witt called the Senate to order.

Speaker Stevenson presented Senator George Purl, President Pro Tempore of the Senate, who, in turn, introduced Dr. Aubrey L. Williams.

At 11:30 o'clock a. m., upon the conclusion of the address by Dr. Williams, the Senate retired to its Chamber.

#### After Joint Session.

The Senate returned to the Senate Chamber at 11:34 o'clock a. m. and was called to order by Lieutenant Governor Edgar E. Witt.

#### Adjournment.

On motion of Senator Small, the Senate, at 11:36 o'clock a. m., adjourned until 10 o'clock tomorrow morning.

### SEVENTH DAY.

Senate Chamber,  
Austin, Texas,  
September 21, 1933.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Moore.
Blackert.	Murphy.
Collie.	Neal.
Cousins.	Oneal.
DeBerry.	Pace.
Duggan.	Parr.
Fellbaum.	Patton.
Greer.	Poage.
Hopkins.	Purl.
Hornsby.	Rawlings.
Martin.	Redditt.

Regan.  
Russek.  
Sanderford.  
Small.

Stone.  
Woodul.  
Woodward.

Absent—Excused.

Holbrook. Woodruff.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

#### Petitions and Memorials.

(See Appendix.)

#### Committee Reports.

(See Appendix.)

#### Senator Excused.

Senator Holbrook was excused for the day, on account of illness in the family, on motion of Senator Sanderford.

#### Memorials Read.

Senator Cousins sent up two communications from his district relative to relaxing or amending the anti-trust laws to be read but not printed.

#### N. I. R. A. Ordered Printed.

Senator Oneal received unanimous consent to have printed in the Journal the National Industrial Recovery Act, as follows:

#### NATIONAL INDUSTRIAL RECOVERY ACT.

Act of June 16, 1933,  
C. ...., 48 Stat.

An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

#### Title I—Industrial Recovery.

##### Declaration of Policy.

1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of liv-